



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 09-1764

Released: August 7, 2009

WTB SEEKS COMMENT ON REQUEST OF DTV NORWICH, LLC FOR WAIVER AND EXTENSION OF DIVESTITURE DEADLINE FOR NEW YORK MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE LICENSE

Comment Date: August 28, 2009

Reply Comment Date: September 8, 2009

DTV Norwich, LLC (DTVN) holds 45 Multichannel Video Distribution and Data Service (MVDDS) licenses. By this *Public Notice*, the Wireless Telecommunications Bureau (Bureau) seeks comment on DTVN's Request for Waiver and Extension of Divestiture Deadline (Request) with respect to call sign WQBD526, MVD001-New York.¹ DTVN seeks a further waiver and 360-day extension of its October 9, 2009, deadline for compliance in the New York market with Section 101.1412 of the Commission's Rules,² the MVDDS/cable cross-ownership rule.

This request for further waiver and extension is occasioned by Cablevision Systems Corporation's (Cablevision) attributable interest in DTVN. Cablevision's interest is impermissible under Section 101.1412(a) of the Commission's Rules³ because it operates a cable system with a service area that significantly overlaps the license area of DTVN's New York MVDDS license.⁴ However, Section 101.1412(g) provides that an entity that would otherwise be barred from acquiring an attributable interest in an MVDDS license by the cross-ownership restriction of Section 101.1412(a) may be a party to an MVDDS application pursuant to the divestiture procedures specified in the rule.⁵ Moreover, if the applicant is otherwise qualified, the application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restriction within 90 days of the final grant of the license.⁶ The purpose of the MVDDS/cable cross-ownership rule is to prevent cable operators from precluding the

² See 47 C.F.R. § 101.1412 (MVDDS eligibility restrictions for cable operators).

³ 47 C.F.R. § 101.1412(a).

⁴ Under Section 101.1412(e), "significant overlap" occurs when a cable operator's subscribers in the MVDDS license area make up 35 percent or more of the Multichannel Video Program Distributor (MVPD) households in that MVDDS license area. 47 C.F.R. § 101.1412(e). See also Sixth Request at 2, n5, citing ULS File No. 0002022365 and FCC Form 602, Ownership Disclosure Report, Indirect Disclosable Interest Holders (File No. 0002220772) (describing Cablevision's 90 percent indirect interest in DTVN).

⁵ 47 C.F.R. § 101.1412(g).

⁶ 47 C.F.R. § 101.1412(g)(4).

entry of new Multichannel Video Program Distributors (MVPDs) and thereby limiting competition in the MVPD marketplace.⁷

On September 23, 2004, the Broadband Division (Division), Wireless Telecommunications Bureau, granted DTVN the above-referenced license for the New York service area subject to the condition that DTVN “shall come into compliance with 47 C.F.R. § 101.1412(a) [the MVDDS/cable cross-ownership limits] within three hundred and sixty (360) days of the final grant of this authorization (MVD001).”⁸ The Division granted this conditional authorization in response to DTVN’s first request for waiver to extend the 90-day deadline to comply with the cross-ownership rule by 270 days to allow Cablevision time to spin off its direct broadcast satellite (DBS) assets, including its interest in DTVN, to its shareholders as a new company.⁹ The spin off described in the *First Request* did not occur as planned and DTVN subsequently filed four successive requests for 360-day extensions.¹⁰ The Division granted each request¹¹ after concluding that each extension would encourage DTVN to continue its efforts to foster the development of MVDDS, especially considering the lack of MVDDS equipment in the market, and would serve the purpose of the cross-ownership rule by promoting competition.¹² DTVN’s current deadline date to come into compliance with 47 C.F.R. § 101.1412(a) is October 9, 2009.¹³

DTVN alleges that an extension will not harm competition but rather will enhance DTVN’s ongoing efforts to establish viable MVDDS operations. Since October 2008, DTVN states that it has made progress towards developing the 12 GHz equipment and service configurations needed to successfully deploy wireless broadband, video, voice, and data services to businesses and consumers.¹⁴ DTVN, however, states that it needs additional time to complete its field testing and evaluate the results, obtain viable commercial equipment, and develop deployment plans including the identification and

⁷ Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9679-80 ¶ 164 (2002) (*MVDDS Second R&O*).

⁸ DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001, File No. 0001618606-MVD001-New York, Request for Waiver and Extension of Divestiture Deadline of Section 101.1412(g)(4) of the Commission’s Rules, *Order*, 19 FCC Rcd 18701, 18707 ¶ (WTB, BD 2004) (*2004 Order*).

⁹ Request for Waiver and Extension of Divestiture Deadline of DTV Norwich, LLC, ULS File No. 0001618606-MVD001 (filed on June 10, 2004) (*First Request*).

¹⁰ See Request for Waiver and Extension of Divestiture Deadline, filed by DTV Norwich, LLC, on August 17, 2005 at (Second Request); Request for Waiver and Extension of Divestiture Deadline, filed by DTV Norwich, LLC, on September 18, 2006 (Third Request); Request for Waiver and Extension of Divestiture Deadline, filed by DTV Norwich, LLC, on September 7, 2007 (Fourth Request); Request for Waiver and Extension of Divestiture Deadline, filed by DTV Norwich, LLC, on September 5, 2008 (Fifth Request).

¹¹ See Letter to James R. Bayes, Esq., from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau, dated October 13, 2005 (*2005 Letter*); Letter to Wayne D. Johnsen, Esq., from Joel D. Taubenblatt, Chief, Broadband Division, WTB, dated October 18, 2006 (*2006 Letter*); Letter to Wayne D. Johnsen, Esq., from John J. Schauble, Deputy Chief, Broadband Division, WTB, dated October 5, 2007 (*2007 Letter*); Letter to Wayne D. Johnsen, Esq., from Blaise A. Scinto, Chief, Broadband Division, WTB, dated October 14, 2008 (*2008 Letter*).

¹² See, e.g., *2007 Letter* at 4; *2005 Letter* at 3-4.

¹³ See, e.g., call sign WQBD526 (special condition).

¹⁴ Sixth Request at 3.

acquisition of transmitter sites.¹⁵ DTVN thus submits that consumers would be best served by granting the instant request to allow the company sufficient time to develop a fully-tested and commercially-viable MVDDS system.¹⁶

DTVN contends that granting the Sixth Request is unlikely to result in common ownership of operational cable and MVDDS systems in any market next year because no MVDDS licensees have initiated service.¹⁷ In addition, it states that the entire MVDDS industry is facing problems with regard to the lack of commercially available equipment.¹⁸ Thus, DTVN avers that grant of the extension will not preclude entry or limit competition in the New York market.¹⁹

We hereby seek comment on the Sixth Request.

Section 1.925(b)(3) of the Commission's Rules provides that a waiver of the Commission's Rules may be granted if it is shown that: "(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; (ii) or in view of unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."²⁰

Interested parties may file comments on the waiver requests on or before the comment date shown on the first page of this public notice. Parties interested in submitting reply comments must do so on or before the reply comment date shown on the first page of this public notice. All filings should reference the DA number of this *Public Notice* and may be filed electronically in ULS²¹ under file number 0003908576 using the following link: <http://wireless.fcc.gov/uls/index.htm?job=home> (on the left side of the webpage, click on "ULS Pleadings").²²

Alternatively, comments may be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20054. The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 47 C.F.R. § 1.925(b)(3).

²¹ See Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings, *Public Notice*, 21 FCC Rcd 424 (WTB 2006).

²² The pleading filing module has three steps. In Step 1, the drop down list of pleading types does not include "Comments." If you are filing comments (rather than a pleading type that is listed on the drop down list) please select "Reply" from the drop down list, *i.e.*, select "Reply" as the pleading type for comments and reply comments. Enter the ULS file number in Step 2. Step 3 of the pleading file module has a free-text field where you can more accurately describe your filing, *e.g.*, as comments.

Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver requests, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver requests will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Mary Woytek, Esq., Broadband Division, Wireless Telecommunications Bureau, at (202) 418-1899, TTY (202) 418-7233, or via e-mail to Mary.Woytek@fcc.gov.

By the Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission.

- FCC -